

## **Estate planning for unmarried couples**

By A. Paul Firuz

In our modern world, it's common to come across couples who live together but are not married. Most unmarried couples—indeed, most people—assume that property rights aren't affected by this kind of relationship, and that only marriage or registered domestic partnership can legally change partners' property rights.

But as relationships have evolved, so has the law. When couples live together in significant relationships—even if they aren't married or registered as domestic partners—Washington courts now test to see whether a relationship was a “committed intimate relationship,” that is, whether it was significant enough to create property rights in the couple. The five-factor test courts have adopted includes: (1) whether there was continuous cohabitation; (2) duration of the relationship; (3) purpose of the relationship; (4) pooling of resources and services for mutual benefit; and (5) the parties' intent.

When a committed intimate relationship exists, the relationship itself can create property rights in unmarried couples without a specific agreement to the contrary. A committed intimate relationship can significantly change an estate plan (if one exists), or even what heirs of a deceased partner might receive under law. This is not because the surviving partner stands in the same shoes as a spouse under law, but rather because of how courts interpret the property rights of those living in committed intimate relationships.

When a committed intimate relationship exists and a Washington court is asked to determine who owned what, the court will make a “just and equitable” disposition of property acquired during the relationship—a division that is much closer to the standard for married couples' property. Of course, this legal default can be changed by agreement between the partners, but many unmarried couples don't realize their property rights could be affected by their relationships and therefore don't take the step of creating any agreement. For these couples, being clear about each partner's intention to keep all (or some) property separate can avoid a messy dispute when the relationship ends.

To see how a committed intimate relationship might affect a person's estate plan, imagine a couple, John and Jill, who were each in their mid-50s when they fell in love. Both were working and both had children from prior marriages. After living together in Jill's house for a few years, John and Jill downsized and bought a condo. Each contributed to the down payment, routine mortgage payments, and home improvement. John and Jill decided not to marry, but lived together happily for 30 years until John's death.

John had an old will that gave everything to his kids. But John and Jill's relationship could make it difficult to parse what property belonged to John (and should pass to his kids), and what property belongs to Jill (and therefore shouldn't be transferred under John's will).

Even if John had updated his will to read, “half of everything to Jill, and the remainder to my kids,” the same question exists about what John owned that should pass under his will, and what

belongs to Jill. And even if the condo was purchased in John's name only, the committed intimate relationship might give Jill her own rights in it.

What John and Jill needed was a statement about whether (and how) they wanted their relationship to affect their property rights.

For example, a will giving all of John's interest in the condo to Jill solves that question—whether John owned 50 percent, 30 percent, or 70 percent, all of his interest would pass to Jill, and both she and John's children could be sure of John's intent.

A signed agreement documenting John and Jill's intent to own the condo 50/50 would also have been useful. Then, even under John's old will, it would be clear that Jill would retain her 50 percent interest in the condo, and the children would receive John's 50 percent (or equivalent value).

If you are in a committed intimate relationship, the best way to protect your property rights and those of your partner—and to keep disputes and legal fees to a minimum—is to be as clear as possible about what role your relationship plays in your life, and what - if any - property rights you intend to create in and share with your partner.

Many couples have financial arrangements that feel clear and fair between the two of them, but which may feel less clear (or less fair) to other family members. And sorting out one partner's true intentions only becomes more difficult after he or she has passed away. Visiting an attorney and creating some basic estate planning documents, or an agreement regarding the couple's property, can avoid a difficult, draining and expensive process to determine property rights when a relationship ends.

[A. Paul Firuz is an attorney with Miller Nash Graham & Dunn LLP. Reach him at [paul.firuz@millernash.com](mailto:paul.firuz@millernash.com) or 206.777.7443.]